

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 88977, N MC 88978, and N MC 185219 through N MC 185240.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Donald O. Shrider, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald O. Shrider appeals the October 26, 1982, decision of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Valley #1, Valley #5, and Buckhorn #4 through #25 lode mining claims, N MC 88977, N MC 88978, and N MC 185219 through N MC 185240, abandoned and void because no notice of intention to hold the claims or evidence of assessment work performed on the claims was filed with BLM in 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (9176), and 43 CFR 3833.2.

The claims were located in 1944 and 1946. Copies of the location notices were filed with BLM September 10, 1979.

The appeal relates only to Valley #1 and Valley #5, N MC 88977 and N MC 88978. Appellant states that the copies of the 1981 proof of labor for these two claims had not been returned to him from the county recorder of Nye County, Nevada, when he took his proofs of labor to BLM, and so were overlooked. He submitted a copy of the 1981 proof of labor for the two claims, showing it was recorded in Nye County, August 27, 1981.

[1] Under section 314 of FLPMA, the owner of a mining claim located before October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before October 22, 1979, and prior to December 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim invalid and void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or

notice of intention to hold the claim, in the proper BLM office. Where, as in this case, the proof of labor did not include the N MC 88977, N MC 88978, and N MC 185219 through N MC 185240 mining claims, there was no discretion under the statute for BLM to determine that those claims had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

